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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7668 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHMAD HASAE @ ASARAF @ ARSHAD MAJARMIYA @ BANNIMIYA
Versus
COMMISSIONER OF POLICE

Appearance:
MS DR KACHHAVAH for Petitioner
Mr.Premal Joshi, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL
Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India as he has been detained by the respondent no.1 under the provisions contained in the Gujarat Prevention of Anti Social Activities Act (for short "PASA") by an order dated 15.6.1999.

2. The grounds of detention disclosed to the petitioner are annexed to the petition at Annexure C dated 15.6.199 which reveals that the detenu is a bootlegger. 4 cases have been registered against the detenu for offences punishable under the provisions contained in the Prohibition Act and cases are pending. Despite this, it is found by the Detaining Authority that the detenu has continued to indulge in such activities. Not only that but for the purpose of dealing in illicit liquor, he is maintaining a gang of persons who were always found armed with Rampuri knife, gupti, sword, hockey stick etc. They were causing injuries to the persons of the locality and passers by and for flimsy grounds they were quarreling with innocent persons and causing apprehension in the minds of people that it was not safe to move in the locality. From the ground of detention, it also appears that the detenu and his associates on 29.4.99 compelled one innocent person to part with the scooter. On questioning, he was assaulted with the knife. When the persons in the vicinity collected, the persons of the gang maintained by him came there with dangerous weapons like hockey, sword, gupti, knife as a result of which the people ran away from the area. This is not the only instance but there are several instances like this. The Detaining Authority has also filed an affidavit indicating that the order of the detenion is just and proper. We are not discussing this aspect in detail as the petition is required to be disposed of on a short ground that the continued detention is bad and illegal in as much as the representation forwarded by the detenu has not been decided. So far as the grounds are concerned, the petitioner stated as under:-

"11. The petitioner further submits that, the representation is sent through the Advocate to the detaining authority dated 10.9.1999. It is also requested in the said representation to forward it to the State Government to consider it. The petitioner further submits that it is delayed for considering the said representation by the authorities. Therefore, his valuable right guaranteed under Art. 22 (5) of the Constitution of India is violated and his continued detention has become illegal.

14. The petitioner further submits that, the representation is sent through the Advocate dated 10.9.1999 to the

Honourable Chief Minister against the order of detention. The petitioner further submits that if the said representation is not expeditiously considered, by the State Government, and delayed for the same, his valuable right u/Art.22(5) of the Constitution of India is violated. Thus, his continued detention has become illegal."

3. If no material is placed before the Court indicating that the representation has been decided in accordance with law, the only inference that can be drawn is that the same has not been decided in accordance with law and therefore the continued detention is required to be held bad and illegal and the detenu is required to be released forthwith, if not required in any other case. The petition is disposed of accordingly. Rule made absolute. No order as to costs.

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